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JAMES BARLOW,

NO. CIV. S-03-872 LKK/PAN P

Plaintiff,

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V.

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MARK TERRELL, et al.,

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Defendants.

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On May 11, 2004, the magistrate judge issued findings and recommendations recommending the above-captioned case be dismissed for failure to serve within the time limit prescribed by Fed. R. Civ. P. 4(m). On May 20, 2004, plaintiff filed timely objections to the findings and recommendations. In his objections, plaintiff avers that he has not received many of the court's previous orders due to frequent changes in his address from the Solano County Jail to the Claybank Detention Facility, delays in forwarding mail and apparent confusion causing mail for him to be forwarded to his son and vice versa. The court notes that in three instances since the

1 issuance of the findings and recommendations, plaintiff has timely
2 notified the court of changes to his address. It appears that, as
3 of February 22, 2005, plaintiff is now incarcerated at the
4 California Correctional Center at Susanville, California. The
5 court finds that the ultimate sanction of dismissal is not
6 warranted in this instance. Taking plaintiff's declaration at its
7 face, and considering his diligence in notifying the court three
8 additional times of changes of address, the court will not adopt
9 the recommendation of dismissal.

10 Accordingly, the court hereby ORDERS that:

11 1. The court declines to adopt the magistrate judge's May 11,
12 2004 findings and recommendations; and

13 2. The matter is remanded to the magistrate judge for service
14 on defendant Solano County Public Defender's conflict office, as
15 found appropriate in his January 28, 2004 order.

16 IT IS SO ORDERED.

17 DATED: August 16, 2005.

18 /s/Lawrence K. Karlton

19 LAWRENCE K. KARLTON

20 SENIOR JUDGE

21 UNITED STATES DISTRICT COURT

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